

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : CR-08-0076 (JBW)

-against- : U.S. Courthouse

DOMENICO CEFALU, JOHN D'AMICO, : Brooklyn, New York

LOUIS FILIPPELLI,

VINCENT PACELLI &

AUGUSTUS SCLAFANI,

DEFENDANTS. :

- - - - - X May 8, 2008

10:00 o'clock a.m.

TRANSCRIPT OF STATUS CONFERENCE AND BAIL HEARING
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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2 For Deft Filippelli

3 MARGARET SHANLEY, ESQ.
4 For Deft Pacelli

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1 THE CLERK: United States versus Cefalu, et al.

2 THE COURT: Good morning.

3 The trial for group A is scheduled now for June 9th,
4 five defendants, Domenico Cefalu, John D'Amico, Louis
5 Filippelli, Vincent Pacelli and Augustus Sclafani. Good
6 morning, everyone.

7 These are the only defendants before us on this
8 motion, correct?

9 MR. LIPTON: Yes, Judge. This was the status
10 conference scheduled at the last appearance.

11 THE COURT: The first motion we'll hear is
12 Mr. Cefalu's motion to preclude the government from offering
13 evidence of any document not made available to the defendant
14 on or before May 8th, 2008, correct?

15 MR. RYAN: That's correct, your Honor. The purpose
16 of that motion is to give some teeth to your Honor's orders of
17 March 14th, directions of April 9th and to allow us to be in
18 shape for the June 9th trial.

19 THE COURT: I'll be happy to hear you.

20 MR. RYAN: One of the particular items that we are
21 complaining about, apart from preclusion, is a body of wiretap
22 evidence, a bug on a car that Mr. Cefalu is riding in with his
23 first cousin.

24 We have been given more than 500 hours of tapes in
25 this case, but nothing from the bugged vehicle. In the

1 500 hours of tapes --

2 THE COURT: He was in the car at all times?

3 MR. RYAN: He was in the car. At all times, no, he
4 was there when the investigators were watching him.

5 THE COURT: Are you seeking the tapes of the period
6 when he was in the car?

7 MR. RYAN: Yes.

8 THE COURT: As well as when he was not in the car,
9 or only when he was in the car?

10 MR. RYAN: My understanding is that the bug was on
11 the car and that's what the focus of my demand is; that we
12 want the recordings of the bug in the car. If there are any
13 recordings, of course of Mr. Cefalu --

14 THE COURT: Whose car?

15 MR. RYAN: Domenico Cefalu. They were riding around
16 in June 1st --

17 THE COURT: Excuse me. Why are you entitled to the
18 recordings when your client was not in the car?

19 MR. RYAN: I'm not asking when he was not in the
20 car.

21 THE COURT: That's what I'm inquiring about.

22 MR. RYAN: Right.

23 THE COURT: You just want to be given what was
24 recorded when he was in the car?

25 MR. RYAN: Precisely.

1 THE COURT: The government has refused to give you
2 those recordings?

3 MR. RYAN: Precisely. I was given a disk. I defy
4 anyone to hear any conversations on the disk I was given.

5 THE COURT: Let's find out. Why aren't you giving
6 him the conversations while he was in the car?

7 MR. LIPTON: We've given defense every conversation
8 of his client in that investigation, while he was in the car
9 or otherwise.

10 THE COURT: Does that include the period when he
11 was in the car but he wasn't talking?

12 MR. LIPTON: I don't know that, your Honor. I
13 think if he would be in the car we would know he's talking. I
14 would say probably no, but I will find out and I can get back
15 to your Honor on that issue.

16 THE COURT: Do you have a recording that's more
17 audible than the one counsel finds difficult to understand?

18 MR. LIPTON: No, I don't think we do, your Honor.

19 THE COURT: You have the same difficulty?

20 MR. LIPTON: Yes, we've tried to do different
21 things. I think we have made attempts to try to enhance a
22 portion of that tape, not the entire tape.

23 THE COURT: Have you furnished the enhancement?

24 MR. LIPTON: I think we do have an enhancement.
25 It's for a short segment of a conversation.

1 THE COURT: Have you transcribed any of it?

2 MR. LIPTON: We're transcribing some of it and this
3 one small portion is transcribed.

4 THE COURT: Turn over to defense counsel whatever
5 you have recorded during the period when he was in the car,
6 whether he was conversing or not. Turn over the enhancements
7 as they become available. Turn over whatever transcripts you
8 have as they become available, the understanding being that
9 those are transcripts in process and defense counsel will not
10 argue to the jury that there are differences between the
11 transcripts offered and the first group, is that understood?

12 MR. RYAN: Clear.

13 THE COURT: Your next problem?

14 MR. RYAN: In addition to the recording, there are
15 contemporaneous records made by the monitoring agents of these
16 conversations with Mr. Domenico Cefalu.

17 THE COURT: That's what he's giving you, the
18 recordings, as I understand it.

19 MR. RYAN: In addition to the recordings, they
20 keep logs, they monitor because they're obligated under the
21 order to make summaries of the conversations.

22 THE COURT: What advantage will that give you?

23 MR. RYAN: The hearing officer that's monitoring
24 hears the conversation directly.

25 THE COURT: I see.

1 MR. RYAN: I ask for the logs, summaries of records
2 contemporaneous with the recordings.

3 THE COURT: Why can't you give him that?

4 MR. LIPTON: We have. It's on the disk. He has
5 everything.

6 THE COURT: Make sure he gets it in a way he can
7 understand it.

8 MR. LIPTON: If he has any questions or problems,
9 they're on there, you click on it, it comes up, summaries from
10 the bug.

11 THE COURT: Don't you have it in writing?

12 MR. LIPTON: They're on there.

13 THE COURT: Didn't they make a written log?

14 MR. LIPTON: They did. It's on the CD, all on
15 recording which he has been provided.

16 MR. RYAN: I must plead guilty to technological
17 incompetence. When I talk to the government I'm unaware of
18 any disks like that.

19 THE COURT: They'll give it to you.

20 What else?

21 MR. RYAN: The other item is the wiretap
22 applications that resulted in the bug and cell phone calls
23 during this period of the investigation. They're
24 investigating Mr. Cefalu because he was suspected of running a
25 sports betting gambling operation.

1 We were given redacted applications. I'm holding
2 one up in my hand, Judge, submitted as an exhibit, wholesale
3 redaction.

4 THE COURT: These are the applications?

5 MR. RYAN: Yes. Let me explain that. The
6 redactions are material to our pretrial preparation.

7 For example, in the application subsequently made to
8 when the bug was on the car, they quote a dialogue. This
9 dialogue, the officers tell the judge of the Supreme Court of
10 New York that Mr. Cefalu admitted that he was the underboss.
11 When and where this conversation took place is redacted. Who
12 was present? What facility was it in, things of that nature.
13 So, the redactions are material for us to conduct our
14 investigation because we submit that this is a distorted
15 transcription of a recording that we can't hear and have no
16 transcript of. The redacted information will give us the full
17 circumstances under which this particular conversation took
18 place. That's why we ask your Honor to unredact them and
19 allow us to have the full panoply of the orders and the
20 applications upon which they were based in order for us to get
21 into this major issue as to whether or not Mr. Cefalu admitted
22 that he was the underboss of the Gambino crime family.

23 THE COURT: As I understand it, you're not seeking
24 that in order to suppress?

25 MR. RYAN: No.

1 THE COURT: What's the answer?

2 MR. LIPTON: We have redacted certain portions of
3 the paperwork related to the eavesdropping or wiretaps. In
4 doing so, we made an application to Judge Garaufis before this
5 case was assigned to your Honor. In that application, without
6 going into the particulars, we sought protection for a number
7 of reasons, including there was an ongoing investigation; that
8 there were --

9 THE COURT: Is that investigation ongoing still?

10 MR. LIPTON: Yes.

11 THE COURT: With respect to other defendants?

12 MR. LIPTON: With respect to not other defendants,
13 other subjects or targets not in this case.

14 That investigation was not part of the investigation
15 that led to the indictment of the defendants in this case. It
16 was not anything used in any of the detention memoranda. We
17 have turned over everything that relates to this defendant,
18 Mr. Cefalu, and it's the government's position the portions
19 that have been redacted, other stuff that has not been
20 disclosed is not Rule 16 discovery, does not relate to the
21 charges. We've provided every statement, every recording
22 Mr. Cefalu is on and the redacted portions of the paperwork
23 relate to issues that were disclosed, the ongoing nature of
24 the investigation, confidential source information and it's
25 the government's position, and Judge Garaufis agreed it would

1 compromise that ongoing investigation, put individuals who are
2 providing information, their safety in jeopardy.

3 THE COURT: Did Judge Garaufis see the unredacted
4 version in making this decision?

5 MR. LIPTON: He did not. It was provided to him.
6 Your Honor, it was made available. We did not actually
7 physically bring it over to him, but it was available if he
8 wanted it. We made that available.

9 THE COURT: Provide me with the redacted and
10 unredacted. I'll look at it in chambers and see if I want you
11 to redact -- unredact -- anything that is redacted. Please
12 do that at your earliest convenience, please.

13 What else?

14 MR. RYAN: That's it, your Honor. I would ask you
15 to seriously consider any applications we may make after today
16 concerning discovery material we're going to be hit with.

17 THE COURT: I always consider all your applications
18 seriously because I know you make them seriously.

19 MR. RYAN: I will.

20 THE COURT: And if you make them, I will consider
21 them.

22 MR. RYAN: Thank you very much, Judge.

23 THE COURT: Thank you.

24 Is there any other defendant who wishes to make an
25 application?

1 (No response.)

2 THE COURT: Any application by the government?

3 MR. LIPTON: I believe there are some applications.
4 I don't know if it was specific to discovery, but I think it's
5 probably better left to defense counsel to describe to your
6 Honor the situation we're in a month out from trial, but after
7 they make those applications --

8 THE COURT: None of them are rising. I assume they
9 have nothing they want to bring to my attention.

10 MR. FRANZ: Eric Franz on behalf of Mr. Sclafani.
11 My application is basically continuation of the application I
12 made before the court.

13 THE COURT: Which is?

14 MR. FRANZ: Adjournment of the trial date currently
15 scheduled for June 9th.

16 THE COURT: Denied.

17 MR. FRANZ: Understood. I want to make my record
18 so the court can understand that there's over 500 hours of
19 tapes here made principally by a gentleman by the name of
20 Vallaro. To effectively prepare for trial, it's not just
21 identifying those portions of the tapes --

22 THE COURT: Are you retained or appointed?

23 MR. FRANZ: Retained.

24 THE COURT: Then get yourself an assistant.

25 MR. FRANZ: Your Honor, I have an assistant.

1 Unfortunately, as I told the court the last time when I
2 indicated in a letter beforehand, I'm commencing a three-week
3 trial 11 days from now. That trial is going to take me some
4 time into the beginning of June.

5 THE COURT: I'm not going to adjourn the trial.
6 I've got too many defense counsel in a case that requires
7 almost all available defense counsel in this district. If I
8 start adjourning this case, I can't juggle it to satisfy
9 anybody. So, you will have to adjust yourself to the schedule
10 of other defense counsel and the court. Nothing new has been
11 brought to my attention. Your motion is denied.

12 Is there anybody else?

13 MR. FUTERFAS: Yes, your Honor. I understand your
14 Honor's practical concerns with all defense counsel, the
15 number of defendants that have been brought in a single case.
16 One of the things that a number of defense counsel are doing
17 are spending very significant amounts of time seeing if we can
18 reach a very significant disposition with respect to many of
19 these defendants, many of the defendants. Whether we will
20 actually achieve the numbers we hope to achieve remains to be
21 seen.

22 However, the practical problem we face is a very
23 significant one. We've had meeting after meeting at the MDC.
24 When we schedule those meetings, they've been very
25 accommodating, my secretary, for example, will send, say we

1 want 15 people or 18 people to attend, defendants. The MDC
2 writes back, says no, for this meeting have seven or eight.
3 So, we have seven or eight. We've had meetings seriatim by
4 different lawyers, some of the lawyers in this room, some of
5 the lawyers not here today, so that over time we reach both
6 defendants on bail and defendants who are not on bail. It's
7 seven or eight at a time per meeting.

8 We have had a meeting with almost 25 defense counsel
9 and getting 25 defense counsel at one meeting at one place at
10 one time is not easy.

11 THE COURT: You can use the telephone.

12 MR. FUTERFAS: We do that. People have different
13 schedules, commitments at different times.

14 THE COURT: Yes, it is difficult, I understand.

15 MR. FUTERFAS: The practical issue we have is that
16 I don't know if I have a specific application at this point,
17 but I do want to inform your Honor because of the issues that
18 we're dealing with. To try to reach such a resolution is
19 absolutely all-encompassing. There are many defense counsel
20 that have to be contacted.

21 Because some people are in group B, F or G, they
22 don't have trial dates, obviously. Cases for them are some
23 time away, the trials. Nonetheless, reaching out to people,
24 getting them involved in the process is something that is
25 taking many, many hours a day.

1 We as defense counsel realistically cannot do both.
2 It's very difficult to try, on the one hand, to resolve a
3 significant portion of the case and on the other hand
4 realistically prepare for trial. We are trying. I have not
5 one but two people assisting me, listening to tape recordings,
6 making transcripts.

7 I'm just telling your Honor of a very, very real
8 practical concern. What we're hoping to do is get a proposal
9 to the government, a mass proposal to the government very
10 early next week. Depending on how that's received, maybe make
11 an appearance before your Honor towards the end of next week
12 or the early part of the following week where we can report
13 more substantively on where we are.

14 My guess is, your Honor, is that if there is much to
15 this proposal, there's always going to be issues with
16 individual defendants. One of the difficulties here is that
17 individual defendants in every case are very differently
18 situated. So, there are going to be situations where there
19 are defendants who A, choose to go to trial; B, just the
20 government and that defendant are not going to agree or going
21 to be far apart. We anticipate that.

22 We are cautiously optimistic there will be a very
23 significant number with whom we can eventually reach some kind
24 of middle ground. That process is going to be very time
25 consuming. Once our mass proposal goes over to the

1 government, they're going to have to look at it. We expect
2 significant amount of time spent in individual negotiations
3 between individual defense counsel and the government.

4 It will be during that period of time and even up
5 until now very difficult to prepare the case for trial from
6 our perspective, I could imagine the government would feel the
7 same way. I guess I'm asking your Honor to simply consider A,
8 to schedule an appearance before your Honor maybe later next
9 week or the very beginning of the following week; B, just keep
10 in your Honor's mind the possibility of considering blocking
11 out a period of time, almost creating a hiatus period in which
12 it would be absolutely necessary if such a disposition is to
13 occur for the parties to devote all their resources to doing
14 that.

15 Again, I don't have a specific application, but I
16 did want to alert your Honor what's going on so you understand
17 at least another backdrop of our practical considerations on
18 this subject.

19 THE COURT: I appreciate your statement. I've
20 already expressed my view that we're fortunate in having such
21 experienced and responsible counsel on both sides. I'll
22 certainly keep what you said in mind.

23 Anybody else wish to be heard?

24 MS. MACEDONIO: Elizabeth Macedonio for
25 Mr. D'Amico. I join in Mr. Franz's application. You know the

1 facts. Discovery is overwhelming. I'm not going to be
2 prepared on June 9th. We are engaged in active plea
3 negotiations.

4 In addition to that, I have a bail application to
5 make this morning. I'm not sure if your Honor wants to hear
6 that independently, just with Mr. D'Amico, if you would like
7 to go forward with everyone here.

8 THE COURT: I'll hear it. I don't need anybody
9 else to hear your application. After we finish with everybody
10 else, you can remain with your client. If the marshals can
11 handle that, we'll hear it. Can you do that?

12 THE MARSHAL: Yes, we can.

13 MR. FRANZ: I have one brief application at the
14 conclusion regarding a travel request for Mr. Sclafani.

15 THE COURT: I'll hear it now.

16 MR. FRANZ: You had granted a request for him to go
17 to Florida with his family May 14th to the 28th. They were
18 going to get tickets for that time. He's asked me to modify
19 that, follow up in a letter if necessary, May 21st to
20 June 4th, moving it over a week. I conferred with the
21 government. They don't object.

22 THE COURT: Granted. Submit an order.
23 What else?

24 MR. LIPTON: I don't know if your Honor would like
25 to set down a status conference date for maybe ten days out.

1 It does make sense to the government. We have been
2 negotiating in good faith with defense counsel. There is what
3 appears to be a large number of individuals who in principal
4 are interested in negotiating. Without getting too deep into
5 it, we're working on that.

6 The practical realities Mr. Futerfas raised are
7 indeed present and we're continuing to prepare for trial. We
8 understand your Honor needs and wants the case to go forward
9 if there's going to be trials; that we will be ready. In an
10 effort to try to accommodate all the negotiations, also to
11 prepare for trial, if we had that status conference date --

12 THE COURT: You want a date set now? What do you
13 want, what date?

14 MR. LIPTON: We can do it the 20th?

15 MR. FRANZ: As I indicated, I would suggest we do
16 it the Friday before. That's the last time I'm available.

17 THE COURT: You may not be sufficiently advanced in
18 your discussions. I'm available any time.

19 MR. LIPTON: I would say, I think, your Honor,
20 May 20th, would give us probably a week from the time we
21 assume we're going to get a proposal from defense counsel and
22 we'll try to turn that around and discuss that with them as
23 soon as possible.

24 THE COURT: May 20th.

25 Jury selection is scheduled for June 9th, right?

1 THE CLERK: I believe it is.

2 MR. LIPTON: We will be making an application for
3 an anonymous jury.

4 THE COURT: You'll have to make it, but I have to
5 be concerned with getting enough jurors in. That may depend
6 upon how many defendants we're faced with and, therefore, how
7 many challenges I'll permit.

8 When does the notice go out to give us a panel on
9 the 9th?

10 THE CLERK: Right about now, a month before.

11 THE COURT: How many are you asking for?

12 THE CLERK: That's my question to you.

13 THE COURT: What's their normal call?

14 THE CLERK: Is it anonymous or is it not?

15 THE COURT: Assume it's going to be anonymous, tell
16 the Clerk of the Court to put on for call an extra one hundred
17 jurors from what he had planned. That will get us through.

18 MR. LIPTON: That's really the issue, your Honor,
19 anonymous jury and also depending on how many individuals we
20 end up with and if we end up with just, for example, one or
21 two --

22 THE COURT: Unless there's an objection, I think an
23 anonymous jury may be useful here.

24 MR. FUTERFAS: Very significant objection from the
25 defense.

1 THE COURT: Make a formal motion.

2 MR. FUTERFAS: Sorry?

3 THE COURT: Make a formal motion.

4 MR. FUTERFAS: Am I making it or is the government
5 moving?

6 THE COURT: The government is making a motion for
7 anonymous jury. They'll make it on papers.

8 MR. FUTERFAS: Then we'll respond.

9 MR. FRANZ: I'll then renew my motion for a
10 severance. Mr. Sciafani is not charged in the racketeering
11 counts, not charged with participating --

12 THE COURT: Your motion is denied. I don't see it
13 has anything to do with your motion.

14 MR. FRANZ: The reason it would, anonymous jury, I
15 submit, is extremely detrimental to the defendant
16 notwithstanding safeguards are put in place.

17 THE COURT: I'll hear you if the government makes a
18 motion. I'll have to set time for argument.

19 Anything further?

20 MR. LIPTON: There were some dates we were going to
21 advise your Honor that key off the trial date in terms of
22 proposed -- proposals -- by the government of getting out
23 3500 material, witness lists, those sorts of things which we
24 had put in our response to Mr. Cefalu's motion. Because we
25 are continuing these negotiations, we had asked that if the

1 trial is going to go forward on June 9th, 2 weeks before that
2 we would have our 404(b) evidence motion in, our anonymous
3 jury motion, 3500 and expert notification and whatever your
4 Honor would like as jury charges from the government.

5 THE COURT: As of this moment we'll assume the case
6 is going to be tried beginning June 9th. If you have any
7 motions that are appropriate, considering that date, make them
8 normally. They are not before me at this moment?

9 MR. LIPTON: That's correct.

10 THE COURT: The only thing open is the bail
11 application, correct? I want to thank you very much.

12 MR. FUTERFAS: Can I inquire through your Honor
13 what is the size? I don't want the defense to remain silent
14 on dates for 3500 material, but I would like to inquire
15 through your Honor are we talking about five boxes of
16 material? I don't know how many witnesses they're going to
17 call. I don't know how many times those individuals have
18 testified. I don't know what the size of this material is.

19 THE COURT: Do you have any idea?

20 MR. LIPTON: There are some witnesses that have
21 testified before that have --

22 THE COURT: I assume the government is looking to
23 move the case forwards.

24 MR. LIPTON: Yes.

25 THE COURT: Don't drag your heels. Give it to them

1 as soon as you have it available on a rolling basis.

2 MR. LIPTON: Yes, Judge. I think two weeks will be
3 more than enough. There are individuals who have testified
4 before. I don't think that's going to be burdensome.

5 THE COURT: Bear in mind they have a practical
6 application they could make if you delay, so move forward.

7 Thank you very much.

8 THE CLERK: May 20th at 11:30.

9 MR. LIPTON: There was one issue before Mr. Cefalu
10 leaves, the government intends to be superseding the
11 indictment as to Mr. D'Amico and Mr. Cefalu on a couple of
12 items, either one or more and we're hoping to have that next
13 week.

14 THE COURT: I can't do anything about that issue.
15 They may have a basis for adjournment.

16 MR. RYAN: This is the first time I'm notified of
17 that.

18 MR. LIPTON: That's our intention. I know it's not
19 before your Honor right now.

20 THE COURT: I'll deal with it when it comes up.

21 MR. RYAN: We will, too. Thank you.

22 MS. MACEDONIO: This is my application.

23 THE COURT: On behalf of?

24 MS. MACEDONIO: Mr. D'Amico. I'm asking for your
25 Honor to reconsider Judge Matsumoto's order of detention

1 against Mr. D'Amico. She found that he was a risk of flight
2 and a danger to the community.

3 I submitted a lengthy memorandum in this regard. I
4 trust the court has received it.

5 THE COURT: Yes.

6 (Pause.)

7 THE COURT: Make your oral statement, please.

8 MS. MACEDONIO: Judge, I think the government has
9 failed to prove, carried their burden in both respects,
10 Mr. D'Amico is a risk of flight or danger to the community.
11 I'm going to start with risk of flight.

12 Everything about Mr. D'Amico's past indicates that
13 he has and will continue to return to court as directed by
14 your Honor. His history is nothing short of remarkable.

15 If in the 1980s there was a federal case brought in
16 New Jersey. On that case he appeared every time he was
17 supposed to. He was released on his own recognizance. The
18 case was ultimately dismissed.

19 Thereafter, in the Southern District of New York,
20 Mr. D'Amico became aware that charges were going to be brought
21 against him. Not only did he self-surrender, but days
22 preceding his arrest, he rented a hotel room in White Plains
23 to facilitate his arrest and surrendered voluntarily to the
24 FBI in White Plains.

25 In the instant case, he heard about the arrest on

1 the news and made arrangements that very day to
2 self-surrender. He's never had an issue with a warrant being
3 authorized by any judge for his nonappearance. He's a 71-year
4 old lifelong resident of the state.

5 He has a home in New Jersey where his wife lives,
6 married many years, raised three children. There's nothing
7 about his past that indicates that he's not going to return to
8 court. Indeed, every time he's been directed to, he's done
9 so.

10 I think the idea that he would in this case
11 self-surrender, then flee is nothing short of ridiculous.

12 The government alleges Mr. D'Amico is facing a
13 significant period of time and that may cause him to flee.
14 That causes me to go into a description of the evidence
15 against him in this case.

16 THE COURT: Your papers indicate he's a sales
17 representative for a water distributor.

18 MS. MACEDONIO: That's correct, had that job for
19 several years, had it while he was on supervised release in
20 the Southern District of New York. He continues to be
21 employed. If he's released he will go right back to work. He
22 takes the train to work. He has no car.

23 THE COURT: Does he pay taxes?

24 MS. MACEDONIO: He most certainly does, your Honor.
25 He's had the job for over 17 years.

1 THE COURT: Is his wife employed?

2 MS. MACEDONIO: She is employed at a local school,
3 monitors the cafeteria.

4 THE COURT: What are their sources of income, her
5 cafeteria income and his employment with the water company?

6 MS. MACEDONIO: And his social security and her
7 social security.

8 THE COURT: They live alone, just the two of them
9 in the house now?

10 MS. MACEDONIO: Yes. The house is paid for.

11 THE COURT: Has no mortgage?

12 MS. MACEDONIO: No mortgage.

13 THE COURT: He does have some health problems?

14 MS. MACEDONIO: Significant health problems. He
15 has diabetes, not receiving medication he needs at the Queens
16 facility. He has a lesion on his pancreas. Obviously if that
17 develops into something else, it's fatal, there's no other way
18 to describe it.

19 We've been unable to make certain he receives the
20 MRI he needs, long overdue for that. He's got other
21 diabetic-related issues with respect to high blood pressure,
22 has to take medication to monitor his heart. He's getting
23 some of the medications but not all that his doctor has
24 prescribed, not nearly in the doses required.

25 THE COURT: What are your proposals?

1 MS. MACEDONIO: I have a package of three
2 properties totaling about \$2 million.

3 THE COURT: \$2 million net assets?

4 MS. MACEDONIO: Yes, secured bond of \$2 million. I
5 would like for Mr. D'Amico to be able to go back to work.

6 THE COURT: What else?

7 MS. MACEDONIO: He will submit to regular pretrial
8 supervision. He doesn't have a passport nor or applied for
9 one.

10 THE COURT: And no application.

11 House arrest while he's not working?

12 MS. MACEDONIO: That's fine.

13 THE COURT: Working or at the doctor or with the
14 lawyer.

15 MS. MACEDONIO: That's correct.

16 THE COURT: No cell phone. Does he use a cell phone
17 at work?

18 THE DEFENDANT: Yes.

19 THE COURT: Who supplies the cell phone?

20 THE DEFENDANT: The company.

21 THE COURT: No cell phone to go home, just while
22 you're at work. You're not to call anybody except on
23 business; do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: How many phones do you have in the

1 house?

2 THE DEFENDANT: One.

3 THE COURT: One land line subject to tapping by the
4 government; subject to house inspection by the government?

5 MS. MACEDONIO: That's fine, Judge.

6 THE COURT: No visitors except relatives by
7 marriage or blood.

8 MR. BURLINGAME: We're going to object.

9 MS. MACEDONIO: That's fine, your Honor.

10 THE COURT: Anything else you want to propose?
11 Ankle bracelet that he pays for?

12 MS. MACEDONIO: That's fine, your Honor; thank you.

13 MR. BURLINGAME: Judge, before we get to the
14 dangerousness issue, the government has evidence the
15 defendant's job at Big Geyser is a sham. There's a recorded
16 conversation in which he says he pays the company \$700 in
17 order for him to receive his salary of \$700 a week. There's a
18 witness who will testify to that. That should not be the
19 basis for him to get out of jail to continue to work at a job
20 which is just a front.

21 THE COURT: Have you seen that?

22 MS. MACEDONIO: I have not. This is the first I'm
23 hearing of it.

24 THE COURT: Do you have a copy of that transcript?

25 MR. BURLINGAME: I have -- I can provide a copy of

1 the transcript.

2 THE COURT: Provide a copy to counsel and we'll
3 adjourn the hearing while counsel considers it. That would be
4 a factor.

5 MR. BURLINGAME: I would like to argue as to
6 dangerousness as I'm sure your Honor is familiar with the
7 Second Circuit authority that frequently has held people who
8 have been alleged to be acting bosses of organized crime
9 families at liberty presents a risk to the public, not only
10 from their own activity, but the subordinates who they are
11 supervising. Obviously the question on your Honor's mind is
12 what is the government's evidence that he is indeed the acting
13 boss of the Gambino family.

14 THE COURT: You'll have to bring it forward. We'll
15 adjourn this until early next week if that's convenient?

16 MR. BURLINGAME: I'm actually going to be traveling
17 the beginning of next week.

18 THE COURT: Can you give that information
19 immediately? Today is Thursday. Do it by Friday, tomorrow.
20 No, tomorrow is impossible for me. When do you start your
21 travel?

22 MR. BURLINGAME: I'm away from tomorrow through --
23 I get back Wednesday of next week. I'm in the grand jury on
24 Thursday.

25 THE COURT: Are you available Wednesday?

1 MR. BURLINGAME: I could be available probably late
2 in the afternoon Wednesday.

3 THE COURT: Put it on for 3:00 o'clock next
4 Wednesday, please.

5 MR. BURLINGAME: I'm sorry, what's Wednesday's
6 date?

7 THE CLERK: The 14th.

8 THE COURT: 3:00 o'clock on Wednesday the 14th.
9 Furnish defense counsel with the materials you're relying on
10 forthwith so she can deal with them, including his
11 relationship with the alleged Mafia gang as an official.

12 MR. BURLINGAME: It's both a mix of cooperating
13 witness testimony and recorded conversations concerning his
14 status as the acting boss.

15 THE COURT: The recorded conversations.

16 MR. BURLINGAME: They have already been turned
17 over, I believe.

18 THE COURT: Give defense counsel a summary of what
19 else. I don't want to hear the witnesses.

20 MR. BURLINGAME: I'll provide a summary of the tape
21 recorded conversations and summary of what the witness
22 testimony would be.

23 THE COURT: Very well. I'll hear you on Wednesday.

24 MR. BURLINGAME: Thank you.

25 MS. MACEDONIO: Thank you.

1 THE COURT: Are you being well treated?

2 THE DEFENDANT: No.

3 THE COURT: What's the problem?

4 THE DEFENDANT: I have lesions on my pancreas, six
5 months behind. I was getting MRI's for my pancreas. In
6 January I was due. February I didn't do it because I got
7 arrested and I was supposed to do it every three months
8 according to Dr. Bloomgard (ph) from Sloane Kettering. I
9 haven't done it in six months. My medication at the facility
10 is minusing me three different medications that go along with
11 my diabetes and my cholesterol. They're giving me whatever
12 they give me, but it's not what I was getting. I gave them a
13 list from my doctor what I'm supposed to get.

14 THE COURT: How do they handle when he needs an
15 MRI? They take him to the facility that has the MRI
16 equipment?

17 MR. LIPTON: I will have to inquire.

18 THE COURT: See what you can do for him. If
19 there's a possible cancer there, we don't want it to develop
20 because he's not getting his appropriate treatment and
21 examinations.

22 MS. MACEDONIO: I've had discussions with the
23 warden at the Queens facility with regard to that.
24 Unfortunately, I think this just comes down to economics.
25 They had submitted that Mr. D'Amico was due for an MRI, went

1 up to corporate. Corporate denied it.

2 THE COURT: Corporate?

3 MS. MACEDONIO: Apparently the group which is the
4 Queens facility is run by a corporation. They've denied my
5 client proper medical treatment. It has to be addressed. A
6 lesion on your pancreas is deadly. The MRI has to be done and
7 it has to be done now. We need to know what's going on.

8 THE COURT: Wednesday, supply a letter from the
9 doctor indicating that it is exigent, if that is the case.
10 You can subpoena, if you wish, an official of the institution
11 to explain why, if his doctor says he must have it, they're
12 not giving it to him.

13 MS. MACEDONIO: I have submitted letters with
14 regard to Mr. D'Amico's medical situation. They are attached
15 to my bail memorandum. If you need something further, I'll be
16 happy to submit.

17 THE COURT: You'll have to convince me so use your
18 subpoena powers. You have the date and time.

19 MR. LIPTON: I don't think that will be necessary.
20 If we need an official here, I'll make sure to communicate
21 with the warden, let him know your Honor is going to have this
22 hearing and the issue of Mr. D'Amico's medical situation is
23 going to be discussed. If defense counsel calls us, we'll
24 intercede, do what we can. If it turns out the facility or
25 BOP is not willing to do something, I'm sure it will be

1 brought before your Honor and the appropriate steps will be
2 taken.

3 THE COURT: Thank you.

4 (Matter concludes.)
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